IN THE UNITED STATES COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

TWILA J. VASSAR — PLAINTIFF

V. — CAUSE NO. 4:93CV97-B-O

BAXTER HEALTHCARE CORPORATION — DEFENDANT

MEMORANDUM OPINION

This cause is presently before the court on the motion of defendant Baxter Healthcare Corporation (Baxter) for summary judgment pursuant to Rule 56(b) of the Federal Rules of Civil Procedure. At issue is the alleged "wrongful termination" of Twila Vassar from her employment with Baxter based on an alleged employment contract between the parties. Jurisdiction is predicated on diversity. 28 U.S.C § 1332. Having considered the motions, the responses, the supporting and opposing memoranda and the submitted exhibits, the court finds that the defendant's motion is well taken and should be granted.

FACTS

The plaintiff was hired by Baxter, a manufacturer of health care products, in 1961. Since 1975, she worked in the defendant's Sterility Department and was charged with the responsibility of ensuring that newly manufactured products came off the line in sterile condition. There was no express contract of employment and the plaintiff does not dispute that her relationship with Baxter was one of employment at will. However, the plaintiff contends

that Baxter was obligated to enforce its rules and regulations as promulgated in the employment handbook in a consistent manner.

On May 1, 1992, the plaintiff began a sterilization testing procedure which involved placing a strip of material called an Intercase Biological Indicator (ICBI) into a treated test tube to determine if the product that went through the sterilization process was in fact sterile. If the strip, after incubation, showed growth of bacteria, the product was not considered sterile. The plaintiff's job required her to record the data from this test on an ICBI Sampling and Testing Report Sheet (Report).

On the day in question, the plaintiff was unable to locate the Report in order to record the date and the time the strips were placed into the incubation test. After unsuccessfully attempting to locate and inform a supervisor, the plaintiff left for the day not to return until after a three-day planned vacation.

Upon her return, the plaintiff was given the Report by a co-worker and told that the management was in an "uproar" about her failure to complete it. The plaintiff completed the form as it would have been filled out on May 1st. The plaintiff does not dispute that this was contrary to company procedures. The defendant contends that this constituted "backdating" -- falsifying the date she recorded the times for the sterility test to make it appear that the Report was filled out on May 1st.

When confronted by her supervisors, the plaintiff informed them that she recorded the time the ICBI's were tested on May 1st on a scrap of paper and therefore was simply transferring the data. When asked to produce the scrap she admitted that in fact there was no scrap of paper but that she had recorded the information from memory. The plaintiff explained later that she made this statement because she was afraid of the consequences of filling out the form from memory.

The plaintiff was discharged from employment on June 3, 1992. The defendant contends that it had the right to terminate Vassar for good reason, bad reason, or no reason under Mississippi's employment at will doctrine. However, it is in fact the defendant's position that Vassar was terminated for what it considered a good reason.

The plaintiff commenced this action on March 29, 1993, essentially alleging a wrongful discharge based on the policies and procedures set forth in the employee manual. She asserts a number of grounds: (a) breach of express contract of employment, (b) breach of an implied in fact contract of employment, (c) breach of an implied covenant of good faith and fair dealing, and (d) promissory estoppel. There being no genuine issue of material fact, the court now rules.

STANDARD FOR SUMMARY JUDGMENT

The defendant's motion is filed pursuant to Rule 56(b) and relies upon sworn depositions and exhibits thereto. Under Rule 56, summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law. Rule 56(c), Fed. R. Civ. P.; Celotex Corp. v. Catrett, 477 U.S. 317, 91 L. Ed. 2d 265 (1986). Summary judgment is proper under Rule 56 if there is "no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Nowlin v. Resolution Trust Corp., 33 F.3d 498, 501 (5th Cir. 1994). "The plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment." Id. This requires that a plaintiff "make a showing sufficient to establish the existence of any element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. The court here finds no factual dispute which would preclude a grant of summary judgment to the defendant.

DISCUSSION

Mississippi to date still follows the common law rule that "where there is no employment contract (or where there is a contract which does not specify the term of the worker's employment), the relationship may be terminated at will by either party." Perry v. Sears, Roebuck & Co., 508 So. 2d 1086, 1088 (Miss. 1987); Shaw v. Burchfield, 481 So. 2d 247 (Miss. 1985).

Mississippi has followed this rule since 1858. See Butler v. Smith & Tharp, 35 Miss. 457, 464 (1858). "This means either the employer or the employee may have a good reason, a wrong reason, or no reason for terminating the employment contract." Kelly v. Mississippi Valley Gas Co., 397 So. 2d 874, 874-75 (Miss. 1981).

The employment manual in question as produced by both parties has as its fourth page an express statement of Baxter's intention to apply the doctrine of at will employment. This page, entitled "Employment at Will," provides:

> The Company believes and adheres to the doctrine of employment-at-will, unless modified by applicable statute. You should not interpret any provision of this handbook as a promise of continued employment, a guarantee of institution due process or a commitment to existing terms or conditions of employment. The contents of this book are subject to change at Baxter's discretion.

As further evidence of the plaintiff's understanding of her terms and conditions of employment, the defendant produced an acknowledgement of receipt of the employment handbook, signed by the plaintiff on February 13, 1992. It provides, in pertinent part:

> I understand that none of contents of this handbook are contractual in nature. I further understand that the employment relationship is based on the mutual consent of each employee and the company.

I. BREACH OF CONTRACT

Without the establishment of a contract, there can be no action for its breach. Accordingly, the plaintiff argues that the

disciplinary system in the employment manual created contractual obligations on the part of the defendant; thus, failure to follow these procedures in discharging her resulted in a breach. This argument is without merit.

In Solomon v. Walgreen, 975 F.2d 1086, 1089-90 (5th Cir. 1992), the Fifth Circuit, construing Mississippi law, faced a similar question. In Solomon, the plaintiff, in acknowledging the controlling at will doctrine, alleged that a contract existed as evidenced by letters to her from the Walgreen management as well as the employment manual and handbook. Id. at 1089. However, the plaintiff had signed an employment application which specifically disavowed any intent to create contractual rights through any representations made on behalf of Walgreen. Id. at 1089-90. The application at issue in Solomon, in relevant part, read as follows:

> I understand that my employment with Walgreen Co. is for no definite period and may be terminated at any time, with or without cause, and with or without any previous notice, at the option of either Walgreen Co. or me.

Id. The Fifth Circuit held that this express disclaimer in the plaintiff's employment application "clearly indicate[d] that the relationship between the two parties was at will." Id. at 1090.

Furthermore, the Mississippi Supreme Court in Perry held that although Mississippi does follow the rule that personnel manuals can create contractual obligations, an express statement in an employment agreement will preclude an action for its alleged breach. Perry, 508 So. 2d at 1088. In Perry, the plaintiff

asserted a breach of contract claim based on an alleged implied contract created by the employee handbook. Id. In denying this claim, the court concluded that "the explicit statement in the personnel handbook that Perry could be terminated at will is more than sufficient to defeat his action insofar as it is based on breach of contract." Perry, 508 So. 2d at 1088-89. Thus, absent evidence to the contrary, the express disclaimer in the handbook and the receipt signed by the plaintiff in the case sub judice clearly negate any inference of a promise of continued employment by Baxter or to be bound by the terms of its handbook. See also Berry v. Liberty Nat. Life Ins. Co., 879 F. Supp. 44, 46 (S.D. Miss. 1995) (wrongful termination suit held not actionable based on at will clause of employee contract); Samples v. Hall of Mississippi, Inc., 673 F. Supp. 1413, 1418 (N.D. Miss. 1987) (express declaration by employer of intent not to incorporate policy provisions into oral contract, as a matter of law, was not promise of continued employment and, therefore, employee could be terminated at will).

Nonetheless, the plaintiff attempts to rely on Bobbitt v. The Orchard, Ltd., 603 So. 2d 356 (Miss. 1992), to support her contention that an implied contract was created, evidenced by the employment handbook. Moreover, the plaintiff asserts that it is the inconsistent enforcement of the employment manual that gives rise to her action and therefore Bobbitt governs instead of Perry

and its progeny. In Bobbitt, the Mississippi Supreme Court was called upon to review the termination of a nurse by her employer for insubordination. In reversing the circuit court's grant of summary judgment for the employer on the basis of the at will employment doctrine, the court held that absent contractual language to the contrary, if the company promulgates procedures to be followed in the event of an employee's infraction of the rules, "the employer will be required to follow its own manual in disciplining or discharging employees for infractions or misconduct specifically covered by the manual." Id. at 357.

This case, however, cannot provide any solace to the plaintiff. Indeed, the express holding in Bobbitt serves to distinguish itself from the case at bar. The Bobbitt court predicated its holding on the fact that there was "no express disclaimer or contractual provision that the manual did not affect the employer's right to terminate the employee at will . . . ." Id. at 362. As such, Bobbitt does not change the result dictated by Perry. Where a disclaimer specifically reserves the right to terminate an employee at will, no contract action lies. Thus, the express disclaimer in the manual and in the receipt signed by Vassar serves to preclude any reliance on provisions in the handbook. See McDaniel v. Mississippi Baptist Medical Center, 869 F. Supp. 445, 453 (S.D. Miss. 1994) (granting summary judgment for employer, Bobbitt notwithstanding, based on language in handbook

expressly preserving right to terminate without cause). Furthermore, there is no indication in Bobbitt that inconsistent treatment would give rise to an independent cause of action. Indeed, under the employment at will doctrine, by definition, the employer is free to discharge the employee for any reason regardless of past practices in similar circumstances.[1]

II. IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

The plaintiff's assertion that her termination in some way was not compatible with good faith and fair dealing is contrary to the clear dictates established by the Mississippi Supreme Court. "[A]t-will employment relationships are not governed by an implied covenant of good faith and fair dealing." Hartle v. Packard Elec., 626 So. 2d 106, 110 (Miss. 1993) (citing Perry, 508 So. 2d at 1089); see also Burroughs v. FFP Operating Partners, L.P., 28 F.3d 543, 547 (5th Cir. 1994) (noting Mississippi law does not recognize a wrongful termination action in tort for an at will employee). The point need not be belabored.

III. ENTRAPMENT

The plaintiff contends that she was "entrapped" into committing a violation of the procedures in the employment manual. As such, she asks this court to carve out another exception to the employment at will doctrine, as followed in Mississippi, to

[1]The court notes that the plaintiff makes no reference to Title 42 U.S.C. § 2000e or any other discrimination statute (age, race, or otherwise).

recognize a cause of action where an employer terminates an employee arbitrarily or in bad faith utilizing entrapment. See McArn v. Allied Bruce-Terminix Co., 626 So. 2d 603 (Miss. 1993) (creating two public policy exceptions to employment at will doctrine, whether written contract or not, for (1) an employee who is discharged for refusing to participate in an illegal act; and (2) an employee who is discharged for reporting illegal acts of his employer).

The court declines to create another exception to Mississippi's employment at will doctrine. Even if Mississippi were to create such an exception the plaintiff would not prevail on the facts before the court. Because Vassar was an employee at will, it defies common sense that Baxter would entrap her into committing a rules violation in order to terminate her if they could have discharged her for no reason or even for a bad reason. The facts simply do not support the plaintiff's claim.

IV. PROMISSORY ESTOPPEL

There being no reasonable basis for reliance or proof shown by the plaintiff of any detriment, the estoppel argument is without merit and need not be discussed further. See Solomon, 975 F.2d at 1091-92 (employee failed to show any change of position in reliance on alleged promises and therefore failed to present any evidence of detriment sufficient to invoke doctrine of estoppel).

CONCLUSION

For the foregoing reason the defendant's motion for summary judgment is granted.

THIS, the _____ day of June, 1995.

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NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE